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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No.

ROBERT L. PIERSON, ET AL., *Petitioners,*

vs.

J. L. RAY, ET AL., *Respondents.*

RESPONDENTS' OPPOSITION TO PETITION FOR WRIT OF CERTIORARI AND ALTERNATIVE CROSS-PETITION.

Respondents Ray, Griffith and Nichols, all policemen of the City of Jackson, Mississippi, and Respondent Spencer, Municipal Justice of said City, oppose the issuance of a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit on the grounds that:

(1) No reasons for granting the writ of the character specified in Rule 19 of this Court are submitted.

(2) The judgment of the Court of Appeals is not a final judgment but is a judgment reversing a jury verdict for Respondents and remanding the case for a new trial as to Respondents who are police officers. While this Court has jurisdiction to issue the writ, the petition does not involve a substantial issue fundamental to the further conduct of this case.

But, if mistaken in this, and if certiorari is to be granted, then Respondents who are police officers of the City of Jackson make this a Cross-Petition for Certiorari so that if the writ issues and this Court reviews the judgment of the Circuit Court of Appeals for the Fifth Circuit, this Court will review the apparent holding of that Court that:

> Respondents who are police officers sued for damages under 42 U.S.C., Section 1983, cannot defend on other and additional grounds beyond the ground that Petitioners invited or consented to the arrest and imprisonment, i.e., that Respondents can defend on the ground of good faith in enforcing the State Statute on probable cause and the ground that Respondents did not make the arrests because Petitioners were an integrated group or use the statute as a sham justification for the arrest or knowingly apply an unconstitutional statute or apply it unconstitutionally.

In support of said alternative Cross-Petition the Respondents adopt all of the allegations of Petitioners as to the jurisdiction of this Court, the statute involved, the actual proceedings of the Court below, the copy of the opinion thereto attached as Appendix A and the reference to the official report thereof.

Petitioners Rely on Insufficient Reasons for Granting the Writ

Petitioners here assign no grounds for or reasons for granting the Writ of Certiorari of the character that this Court considers special, important and sufficient, i.e., the decision of the Court of Appeals of the Fifth Circuit is not in conflict with the decision of other Courts of Appeal on the same matter. In so far as the holdings relied on by Petitioners to justify review are concerned: The Court of

Appeals of the Fifth Circuit has not decided an important state question in conflict with the applicable state law; has not decided an important question of federal law which has not been but should be settled by this Court; has not decided a federal question in a way in conflict with the applicable decisions of this Court; and has not so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

I. *Certiorari should not be granted to review the holding of the Court of Appeals that a police justice is immune from liability for damages under 42 U.S.C. 1983 for error of judgment or error in the determination of the validity of or applicability of a criminal statute.*[1]

Admittedly here the police court of the City had jurisdiction and there was no denial of due process by the judge. After arrest the Petitioners were regularly processed. Affidavits were filed in the City Police Court by the Chief of Police of the City of Jackson to the effect that Petitioners had congregated with others in or around the Continental Bus Terminal ". . . a place of business engaged in selling or serving members of the public . . . under such circumstances that a breach of the peace might have been occasioned thereby" and that they did then and there "wilfully and unlawfully fail and refuse to disperse and move on

[1] The Petition misstates the holding of the Court below in asking this Court to review "The holding that a police justice who acts . . . *knowingly* to deprive persons of rights secured by the Constitution . . . is immune from liability . . ." (p. 12) The Court of Appeals did not so hold but limited the immunity of judges to liability in this case to an error of judgment or error of law stating: "A judge should not be put to a correct determination of the validity of a criminal statute at the hazard of being cast in damages for the making of a wrong guess."

when ordered to do so" by a law enforcement officer. (R. 110-11) They had been arrested at noon on September 13th, 1961, and were duly tried in the Police Court under Respondent Judge Spencer on the 15th. They were represented by counsel, including both a local attorney and the chief legal adviser for CORE. The unconstitutionality of the statute under which they were arrested was not raised. No jury trial was requested by Petitioners. *None of the Petitioners testified in their own behalf.* (R. 419, 151-2, 615) Petitioners were convicted by Judge Spencer of violation of Section 2087.5, *Mississippi 1942 Code,* copy of which is attached hereto as Appendix A, which made it a misdemeanor to congregate in any public place of business and refuse to move on on order of the police either with intent to provoke a breach of the peace or "under circumstances such *that a breach of the peace may be occasioned thereby.*"[2]

The preceding May Judge Spencer had convicted a Negro, Thomas, of the same offense. There had been a trial de novo in the County Court and he had been found guilty and, apparently, at about this time he had appealed to the Circuit Court. Later, in 1964 the conviction was affirmed by the Supreme Court of Mississippi and the statute specifically held valid and constitutional. *Thomas* v. *State,* 160 So. 2d 657. The Supreme Court of the United States reversed the criminal conviction by per curiam opinion in April, 1965, 380 U.S. 524, 14 L.ed.2d 265, solely on *Boynton* v. *Virginia,* 364 U.S. 454, 5 L.ed.2d 206, i.e., solely on the ground that the statute *as applied* to a Negro in a restaurant in a terminal was contrary to the Interstate Commerce Statutes if the order of the police to leave was solely on account of race, i.e., on the application of the

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[2] The statute was thus unlike that involved in *Edwards* v. *South Carolina,* 372 U.S. 229, decided, however, long after this decision by Judge Spencer.

statute in the particular case. The statute was not held unconstitutional on its face.

It was not until September, 1963, that Jackson municipal authorities were enjoined from enforcing certain other Mississippi statutes *requiring* segregation of facilities of interstate commerce (not in Section 2087.5). *Bailey* v. *Patterson*, 323 F. 2d 201, certiorari denied 376 U.S. 910, 11 L.ed.2d 609.

This Court is well aware of the changes in legal decisions since 1961 and the vast number of lower courts reversed during that period.

Any issue as to whether or not Judge Spencer acted "knowingly to deprive persons of rights secured by the Constitution", as the issue here is incorrectly stated by Petitioners, has been finally determined. It was submitted to the jury under proper instructions (R. 632) and decided in his favor. The Court of Appeals merely reviewed the evidence and held that actually the District Court should have dismissed as to Spencer because there was no evidence to sustain a finding of such wilfulness or intent and that as a judge, having jurisdiction of the case, he was immune from liability in damages for an error of judgment. The case was thus remanded with an order to dismiss as to Spencer.

By so stating this issue here Petitioners seek to have this Court review a factual issue of consequence only in this particular litigation which this Court will not do. *Southern Power Co.* v. *North Carolina Public Serv. Co.*, 68 L.ed. 413, 263 U.S. 508; *General Talk. Pictures Corp.* v. *Western El. Co.*, 82 L.ed. 1273, 304 U.S. 175. Cf. dissent of Mr. Justice Harlan, Frankfurter and Whittaker in *Crumady* v. *"Joachim Hendrik Fisser"*, 3 L.ed.2d 413, 358 U.S. 423.

Petitioners cite only one case involving immunity of judges in Civil Rights actions under *42 U.S.C.* 1983, i.e.,

Picking v. *Pa. R. Co.*, C.A. 3, 151 F. 2d 240.[3] There the charge against the justice of the peace was that ". . . he denied and refused a hearing to the plaintiffs upon their arrest . . . (and thereby) . . . may have deprived the plaintiffs of their liberty *without due process of law* . . ." Moreover, the holding there that an action under Section 1983 could be maintained in spite of the common law judicial immunity of the justice of the peace was based on the construction of the statutory provision that "*Every person who* . . . subjects or causes to be subjected any citizen . . . to the deprivation of any rights . . ." was broad enough to include a judge. However, such construction would also necessarily require that it be broad enough to include state legislators who by enacting unconstitutional statutes could "*cause*" persons to be subjected to a deprivation of constitutional rights. This interpretation, however, was repudiated by this Court in *Tenney* v. *Brandhove*, 95 L.ed. 1019, 341 U.S. 367, holding that the Civil Rights statutes did not overturn the traditional common law immunity of legislators.[4]

Since *Tenney* there have been no decisions of any Circuit Court of Appeals in conflict with the holding of the Circuit Court of Appeals below that the Civil Rights Act creates no exception to the common law rule of judicial immunity from civil action for damages arising out of judicial acts. Cases in accord with the decision of the Court of Appeals below, where frequently certiorari has been denied by this Court, include: *Ray* v. *Huddleston*, C.A. 6, 327 F. 2d 61, adopting the opinion in *Ray* v. *Huddleston*, 212 F. Supp. 343; *Rhodes* v. *Meyer*, C.A. 8, 334 F. 2d 709,

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[3] Judicial immunity was not considered in *McShane* v. *Moldovan*, C.A. 6, 172 F. 2d 1016.

[4] This case also repudiated the argument of *Picking* based on legislative debate in 1871 during the enactment of the statute. In *Tenney* it was said: "The limits of §§ 1 and 2 of the 1871 statute . . . were not spelled out in debate." Cf. *Brown* v. *Board*, 98 L.ed. 873, 347 U.S. 483, on the inadequacy of legislative history to resolve Civil Rights issues today.

certiorari denied 13 L.ed.2d 186, 379 U.S. 915; *Sires* v. *Cole*, C.A. 9, 320 F. 2d 877; *Haldane* v. *Chagnon*, C.A. 9, 345 F. 2d 601; *Arnold* v. *Bostick*, C.A. 9, 339 F. 2d 879; *Harmon* v. *Superior Court of State of California*, C.A. 9, 329 F. 2d 154; *Sarelas* v. *Sheehan*, C.A. 7, 326 F. 2d 490, certiorari denied 12 L.ed.2d 296, 377 U.S. 932; *Campo* v. *Niemeyer*, C.A. 7, 182 F. 2d 115; *Cawley* v. *Warren*, C.A. 7, 216 F. 2d 74; *Francis* v. *Crafts*, C.A. 1, 203 F. 2d 809, certiorari denied 98 L.ed. 357, 346 U.S. 835; *Kenney* v. *Fox*, C.A. 6, 232 F. 2d 288.

II. *Certiorari should not be granted to review the holding that policemen are not liable in damages to persons who deliberately planned to be arrested and confined and provoked the arrest.*

Again petitioners have erroneously stated what the holding of the lower Court was. The Court below did not hold, as alleged by Petitioners, that policemen would not be liable in damages for a wrongful arrest merely because the person arrested performed a constitutional act knowing that the policeman might wrongfully arrest him. On the other hand the Court stated: "The question is not whether the appellants could lawfully dramatize their protests against racial inequality by attempting to eat in a wrongfully segregated lunchroom . ... It goes without saying that they might do so. Rather the question is whether, in so doing, can they include in their program *a planned arrest and confinement* and then successfully rely upon such confinement *as the basis for recovery in an action for damages for false imprisonment.*"

Petitioners have confused acts done *for the purpose of exercising a constitutional right* where there could be arrest with *acts done for the deliberate purpose of being arrested.* The organization sponsoring Petitioners condones such acts, but usually recognizes that persons deliberately en-

gaged in actual civil disobedience to dramatize their rights must accept the legal consequences of their act. No one should condone such acts where they were for the purpose of or made use of to collect a money judgment for the very arrest and imprisonment they deliberately caused.

The Court below cited authorities to support its position under the tort principle of volenti non fit injuria (*86 C.J.S.*, Torts, Section 12). It is also closely akin to Assumption of Risk. *86 C.J.S.*, Torts, 990-1. I.e., Assent by submitting voluntarily to known dangers with a realization of the risk resulting in an inability to base a tort action on harms produced by the assumed danger.[5]

Actions for damages under *28 U.S.C.A.* 1983 must be tried on the basis of common law tort liability, i.e., ". . . should be read against the background of tort liability that makes a man responsible for the natural consequences of his actions." *Monroe* v. *Pape*, 365 U.S. 167, 5 L.ed.2d 492.

Petitioners have cited no case to the contrary, or no decision of this Court or of any Court of Appeals in conflict with the holding of the Court of Appeals of the Fifth Circuit herein.[6]

On the other hand, they merely argue that evidence was insufficient to justify any such finding. This was contrary to the opinion of the trial judge (R. 625) and contrary to the finding of the Court of Appeals. However, neither court granted Respondents a directed verdict but this cause is now remanded to the District Court for a determination by a jury of this very issue of fact. Here again Petitioners are relying for certiorari on a disputed factual issue.

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[5] Mississippi recognizes the defense of assumption of risk in tort actions, although it has by statute been eliminated as a defense in a master and servant relationship. Cf. *Saxton* v. *Rose*, 29 So. 2d 646; *Elias* v. *New Laurel Radio Station, Inc.*, 146 So. 2d 558.

[6] I.e., "We think the tort principle of volenti non fit injuria applies to the claim asserted for a civil rights violation under 42 U.S.C.A. 1983 as well as to the common law action."

III. *Certiorari should not be granted to review the holding that under the facts here and after the finding of the jury here that Respondents were immune from liability for false imprisonment at common law under the Mississippi rule.*

Here again the Petitioners have confused the issue by the wording of their reason for granting the writ.

As the Court below pointed out, the action brought by Petitioners was twofold, i.e., a common-law tort claim for false imprisonment and a statutory claim for damages under *42 U.S.C.A.* 1983.

The Court of Appeals merely held that under the facts in this record and after a jury verdict for the Respondents that under the controlling Mississippi law there was no liability on Respondents for false imprisonment *at common law* and the immunity of Respondents on this issue was affirmed.

The Court below had before it, in considering the common law cause of action, a large number of Mississippi cases holding that there could be no recovery of damages against a police officer merely because a subsequent trial acquits the defendant or because the defendant is discharged without trial *if there was in fact probable cause for the arrest, and the arrest was made in good faith in the regular and proper manner.*[7] *King* v. *Weaver*, 127 So. 718; *State* v. *Broom*, 58 So. 2d 32; *Forsythe* v. *Ivey*, 139 So. 615.[8] Cf.

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[7] The question of "probable cause" being one for the jury. *Howell* v. *Viener*, 176 So. 731; *Lenas* v. *Conway*, 105 So. 2d 762.

[8] "Probable cause" negatives actual misuse of the authority granted by statute. Nor is *Nesmith* v. *Alford*, C.A. 5, 318 F. 2d 110, certiorari denied 375 U.S. 975, 11 L.ed.2d 420, in point, in that it was decided under the very different Alabama law where the act of an officer in arresting without a warrant was unlawful regardless of the presence of probable cause and where under the Alabama breach of the peace statute it was not a crime for persons to act in a peaceful manner merely because such lawful and peaceful conduct incites a breach of the peace by others.

Sections 2470 and 2474 of the *Mississippi 1942 Code*, copies of which are attached as Appendix B.

The Court below then raised the question of whether or not this rule was applicable although the arrest was made under a criminal statute which was *later* held unconstitutional and correctly stated that under the Mississippi law a common law cause of action for damages could not stand under such circumstances, citing *Golden* v. *Thompson*, 11 So. 2d 906.[9]

However, we again point out that the Court below was in error in assuming that the Mississippi statute had been declared absolutely void or unconstitutional on its face, i.e., regardless of how it was applied or the particular facts and circumstances of the application thereof. Criminal prosecution in *Thomas* v. *State*, Miss., 160 So. 2d 657, was merely reversed by this Court in 14 L.ed.2d 265 by per curiam opinion referring only to *Boynton* v. *Virginia*, 364 U.S. 454, 5 L.ed.2d 206. There again a criminal conviction was merely reversed *and this Court pretermitted the constitutional issue* and merely held that where the criminal defendant had been arrested at the request of the owner of a restaurant in the terminal of a carrier solely on account of race, the arrest was illegal under the Interstate Commerce Act.

We agree with Petitioners that the issue was ". . . whether the arrest was really in reliance upon the statute or whether the police really arrested petitioners because they were an integrated group and used the 'breach of the peace statute' as a sham justification for the arrest . . . whether it was knowingly applied unconstitutionally".[10] However, this issue had been determined in favor of Re-

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[9] Also cited with approval in *Miller* v. *Stinnett*, C.A. 10, 257 F. 2d 910, where the Court held that the tests were whether or not the arrest and detention was made in good faith in reliance on the ordinance.

[10] Petition, p. 19.

spondents by the jury under instructions which the Court below found adequate.[11]

Petitioners have cited no authority from this Court or any other Court to the effect that the Mississippi law would not be controlling in a common law action for damages against policemen and no Mississippi authority in conflict with those cited by the Court of Appeals.

IF CERTIORARI IS GRANTED, THEN THE COURT SHOULD REVIEW THE VAGUE AND INDEFINITE LANGUAGE OF THE OPINION OF THE COURT BELOW AND THE POSSIBLE INTERPRETATION THEREOF AS LIMITING THE DEFENSE OF POLICE OFFICERS IN ACTIONS UNDER 28 U.S.C. 1983 SOLELY TO WHETHER OR NOT PETITIONERS INVITED OR CONSENTED TO THE ARRESTS AND IMPRISONMENT FOR WHICH THEY SEEK DAMAGES.

The Court below after dismissing the action as to the judge and after dismissing the action in so far as it sought damages for false imprisonment at common law, then reversed for errors in admission of evidence and remanded the case for a new trial on the issue of the liability of the police officer under *42 U.S.C.* 1983.

The opinion of the Court below is, we submit, confusing as to what is exactly held.

The Court first points out that police officials do not have absolute immunity from arrests. No contrary claim is made. Respondents merely claim that they have the same quasi judicial immunity which protects police officers at

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[11] The instructions as a whole (R. 627-643) are somewhat inept and conflicting. This very conflict cured the ineptness thereof. When the jury was instructed that they could find for the Respondents if they found from a preponderance of the evidence that at the time of the arrest the officers had "probable cause to believe that the plaintiffs were guilty of the offense for which they were arrested", this was necessarily a charge that they must find that the police officers did not arrest Petitioners merely because they were an integrated group and did not knowingly apply the statute unconstitutionally.

common law, i.e., if the arrests were made on probable cause and in good faith, i.e., good faith reliance on the statute and good faith appraisal of the facts and circumstances.

The Court below first stated that there was "uncertainty" as to the extent to which immunity of police officials applied under the Civil Rights Act—thus indicating that to some extent there was certainly some immunity even under the Civil Rights Act.

The Court, however, then went further and said: "The defense of immunity is not available to the police appellees in this case."[12] If the Court was referring to complete immunity, we have no fault to find therewith. If, however, the Court meant that there could be no jury issue as to whether or not they were not under the particular facts and circumstances immune in an action under *28 U.S.C.* 1983 on the determination by the jury that the arrests were legal and on probable cause and made in good faith, then, we submit, that the Court below was in error.

This above statement of the Court below was based only on two cases:

Cohen v. *Norris*, C.A. 9, 300 F. 2d 24, dealing solely with the sufficiency of a complaint against motion to dismiss, for damages against police officers allegedly subjecting the plaintiffs to unreasonable searches and seizures without a search warrant and not as an incident to any arrest, much less a valid arrest, i.e., a clear misuse of their authority as policemen. The Court did not preclude officers from a defense thereto but merely held that the complaint was sufficient. "The burden of proving exceptional circumstances which would authorize a search, without a search

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[12] And also in concluding the opinion the Court remanded the case ". . . so that there may be a determination of the fact issue as to whether the appellants invited or consented to the arrest and imprisonment", as if this were the only defense available to them.

warrant, and not incident to a valid arrest, should be upon those who conducted the search, as a matter of defense." The Court carefully stated: "But here it is alleged that appellees had *unlawful purposes* in exercising force and in conducting a public search. Whether appellant can prove that such purposes existed, or what if any damages may have been sustained, are matters which are not now before us."

and

Monroe v. *Pape*, 365 U.S. 167, 5 L.ed.2d 492, again involving merely the sufficiency of the allegations of the complaint on motion to dismiss. Here again the officers allegedly had broken into the plaintiffs' home and routed them from bed and mistreated them and ransacked every room and detained them for ten hours without charges, all without a search warrant or an arrest warrant, i.e., a clear misuse of authority as policemen not only not acting under any statute or ordinance but acting in direct conflict with the local statutes and ordinances. The principal issue there was whether or not they were acting under color of state law when they merely abused their position, an issue not here involved. The Court then went no further, in holding the complaint sufficient, than state that the civil rights statutes did not require a criminal intent as did the criminal civil rights statutes, or "wilfulness", but that "Section 1979 (18 U.S.C. 1983) should be read against the background of tort liability that makes a man responsible for the natural consequences of his actions."

Under the background of common law tort liability police officers have a quasi immunity from damages for false imprisonment if the arrest is made in good faith on probable grounds, i.e., this is a general principle of the common law, not one peculiar to Mississippi. *35 C.J.S.*, False Imprisonment, Section 25, frequently applied in the federal

courts. *Carr* v. *National Discount*, C.A. 6, 172 F. 2d 899, certiorari denied 94 L.ed. 495; *Ravenscroft* v. *Casey*, C.A. 2, 139 F. 2d 776, certiorari denied 89 L.ed. 596, 323 U.S. 745. It is thus no local rule of immunity unassociated with a generally recognized common law immunity.

Since *Monroe* v. *Pape* the federal courts have consistently continued to hold that actions for damages against police officers *under the Civil Rights Act* could be defended on the ground of probable cause for the arrest or the rational basis for the arrest and the ground that the officer in making the arrest did so in good faith in the performance of his official duties as he understood them, i.e., defend on the ground that the statute or ordinance was not a sham justification for the arrest and that it was not knowingly wrongfully applied.[13] *Smith* v. *Dougherty*, C.A. 7, 286 F. 2d 777 (1961), certiorari denied 7 L.ed.2d 97, 368 U.S. 903; *Pritchard* v. *Downie*, C.A. 8, 326 F. 2d 323 (1964); *Joyce* v. *Ferrazzi*, C.A. 1, 323 F. 2d 931 (1963); *Striker* v. *Pancher*, C.A. 6, 317 F. 2d 780 (1963); *Hurlburt* v. *Graham*, C.A. 6, 323 F. 2d 723 (1963).

If the apparent holding of the Court of Appeals is therefore in direct conflict with these decisions of other Courts of Appeal, can it be justified solely on the ground that three years after the arrests complained of the statute was held unconstitutional? *Monroe* v. *Pape*, supra, does not so hold but merely involved acts of officers in direct conflict with valid statutes.[14]

The Court of Appeals in its opinion cites no case holding that in an action under *28 U.S.C.* 1983 there can be a recovery of damages against arresting officers when the

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[13] And this is the defense that Respondent policemen urge that they have the right to make here.

[14] The Court below therefore has, we submit, no justification for the statement that "Inherent in the Monroe holding is the principle that good faith and reliance upon a state statute subsequently declared invalid are not available as defenses."

arrests otherwise non-actionable were made under a statute constitutional on its face but later held unconstitutional. That very court had previously held to the contrary. In *Whittington* v. *Johnston,* C.A. 5, 201 F. 2d 810, the Court stated: "In invoking the Alabama statute, defendants were entitled to act upon the presumption that the statute is valid, as it has (at that time) not been authoritatively declared otherwise . . ."

This is also indicated in *Striker* v. *Pancher,* C.A. 6, 317 F. 2d 780, and *Hoffman* v. *Halden,* C.A. 9, 268 F. 2d 280.

The rule in Mississippi is that there can be no liability merely on this ground. The Court below merely stated that this "*may* be" a minority rule. Certainly there is a conflict of authority on this question among the various states and the Mississippi rule is not purely a local rule. However, we submit the Mississippi rule is the federal rule.

The controlling case is *Chicot County Drainage District* v. *Baxter State Bank,* 84 L.ed. 329, 308 U.S. 371, where the Court refused to apply the principle of absolute retroactive invalidity of a statute. Cf. *Thomas* v. *Chamberlain,* 143 F. Supp. 671, affirmed 236 F. 2d 417, C.A. 6, following the Texas rule in a statutory civil rights action; *Cudahy Packing Co.* v. *Harrison,* 18 F. Supp. 250, applying the rule to the conduct of an officer under a federal statute which was later held void; *Phipps* v. *School Dist. of Pittsburgh,* C.A. 3, 111 F. 2d 393, following *Chicot.*

Here, however, the Mississippi statute has not been held totally invalid, but merely that a criminal conviction would not stand where someone was put out of a restaurant in the terminal of a carrier solely on account of race. The police officers here would be entitled to the defense that the arrests were not made on account of race. The statute being valid on its face, the officers were under the duty of enforcing it if in the good faith exercise of their honest judgment and discretion they thought the enforcement

thereof was necessary. Policemen are not lawyers and they should not be required to pass on a possible future invalidation of the statute. If our police officers and their families are to be pauperized for enforcing what they believe to be valid statutes then the enforcement of criminal laws will sink to lower depths than it has already done in some areas. Policemen will be afraid to risk performing their duties.

Conclusion

We submit that the Petition for Writ of Certiorari should not be granted because there is no merit therein and no justifiable reason for the granting of certiorari under Rule 19.

Also we had thought, and now think, that the issues with reference to the police officers should await the final outcome of this litigation and a final judgment herein prior to any review by this Court. However, if mistaken in this and if this Court issues a Writ, then Respondents submit that this Court should review the additional issue submitted by them.

Respectfully submitted,

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Certificate of Service

The undersigned of counsel certifies that a true and correct copy of the foregoing Respondents' Opposition to Petition for Writ of Certiorari and Alternative Cross-Petition was this day mailed by United States mail, postage prepaid, to: Carl Rachlin, 38 Park Row, New York, New York, and Melvin Wulf, 156 Fifth Avenue, New York, New York, attorneys of record for Petitioners.

This the 25th day of March, 1966.

THOMAS H. WATKINS,
Of Counsel for Respondents.

APPENDIX A

Mississippi 1942 Code

§ 2087.5. Disorderly conduct—may constitute felony, when.

1. Whoever with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby:

(1) crowds or congregates with others in or upon shore protecting structure or structures, or a public street or public highway, or upon a public sidewalk, or any other public place, or in any hotel, motel, store, restaurant, lunch counter, cafeteria, sandwich shop, motion picture theatre, drive-in, beauty parlor, swimming pool area, or any sports or recreational area or place, or any other place of business engaged in selling or serving members of the public, or in or around any free entrance to any such place of business or public building, or to any building owned by another individual, or a corporation, or a partnership or an association, and who fails or refuses to disperse and move on, or disperse or move on, when ordered so to do by any law enforcement officer of any municipality, or county, in which such act or acts are committed, or by any law enforcement officer of the State of Mississippi, or any other authorized person, or

(2) insults or makes rude or obscene remarks or gestures, or uses profane language, or physical acts, or indecent proposals to or toward another or others, or disturbs or obstructs or interferes with another or others, or

(3) while in or on any public bus, taxicab, or other vehicle engaged in transporting members of the public for a fare or charge, causes a disturbance or does or says, respectively, any of the matters or things mentioned in subsection (2) supra, to, toward, or in the presence of any other passenger on said vehicle, or any person outside of said vehicle or in the process

of boarding or departing from said vehicle, or any employee engaged in and about the operation of such vehicle, or

(4) refusing to leave the premises of another when requested so to do by any owner, lessee, or any employee thereof,

shall be guilty of disorderly conduct, which is made a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than two hundred dollars ($200.00), or imprisonment in the county jail for not more than four (4) months, or by both such fine and imprisonment; and if any person shall be guilty of disorderly conduct as defined herein and such conduct shall lead to a breach of the peace or incite a riot in any of the places herein named, and as a result of said breach of the peace or riot another person or persons shall be maimed, killed or injured, then the person guilty of such disorderly conduct as defined herein shall be guilty of a felony, and upon conviction such person shall be imprisoned in the Penitentiary not longer than ten (10) years.

2. The provisions of this act are supplementary to the provisions of any other statute of this state.

3. If any paragraph, sentence, or clause of this act shall be held to be unconstitutional or invalid, the same shall not affect any other part, portion or provision of this act, but such other part shall remain in full force and effect.

APPENDIX B

Mississippi 1942 Code

§ 2470. Arrests—when made without warrant.

An officer or private person may arrest any person without warrant, for an indictable offense committed, or a breach of the peace threatened or attempted in his presence; or when a person has committed a felony, though not in his presence; or when a felony has been committed, and he has reasonable ground to suspect and believe the person proposed to be arrested to have committed it; or on a charge, made upon reasonable cause, of the commission of a felony by the party proposed to be arrested. And in all cases of arrests without warrant, the person making such arrest must inform the accused of the object and cause of the arrest, except when he is in the actual commission of the offense, or is arrested on pursuit.

§ 2474. Arrests—no liability for if made legally.

Officers and others who make arrests as authorized or required by law, shall not be liable on account thereof, civilly or criminally, notwithstanding it may appear that the party arrested was innocent of any offense.